

No. 43: Sentencing trends for incest in the higher courts of Victoria, 2002-03 to 2006-07

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of incest and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2002-03 and 2006-07³.

A person who engages in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child is guilty of incest. Similarly, a person who takes part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant (or the step-child) of his or her de facto spouse is guilty of incest⁴. Incest is an indictable offence and is triable before a judge and jury in the County or Supreme Court. The maximum penalty for this offence is 25 years' imprisonment⁵.

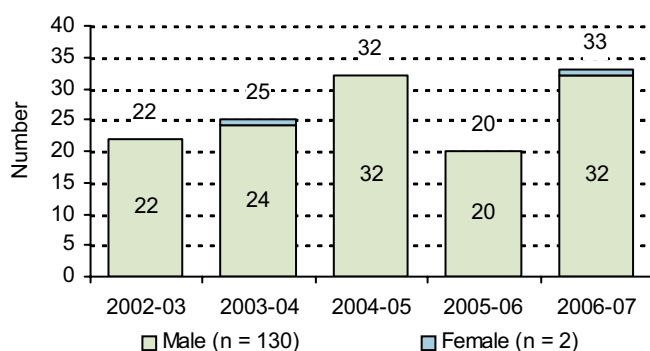
Incest was the principal offence in 1.3% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for incest for the period 2002-03 to 2006-07. As shown, 132 people were sentenced for incest over the five year period. There were 33 people sentenced for this offence in 2006-07, up by 13 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (98.5% or 130 of 132 people), including 32 of the 33 people sentenced in 2006-07.

Figure 1: The number of people sentenced for incest by gender, 2002-03 to 2006-07



Sentence types and trends

Figure 2 shows the total number of people sentenced for incest and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention⁶. Over the five year period, 95% of people were given a custodial sentence. This peaked at 100% (20 of 20) in 2005-06 after a low of 94% (30 of 32) in 2004-05.

Figure 2: The number of people sentenced for incest and the number who received a custodial sentence, 2002-03 to 2006-07

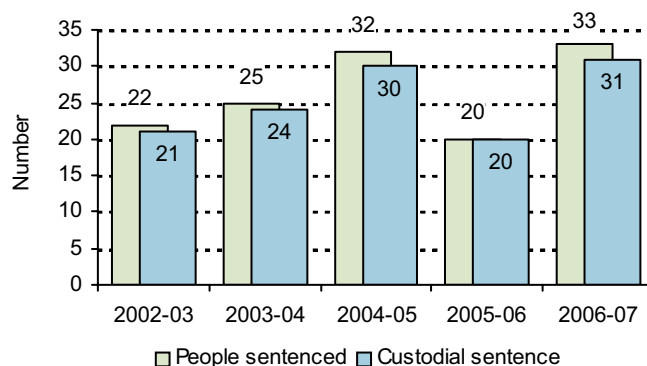


Figure 3 and Table 1 show the number of people sentenced for incest from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, the majority of the people sentenced for incest received a period of imprisonment (91% or 120 of 132 people). This has remained relatively stable ranging from a low of 88% to a high of 94% over the five year period. One in twenty people received a partially suspended sentence of imprisonment (5%), while 4% received a wholly suspended sentence of imprisonment.

Figure 3: The number of people sentenced for incest by sentence type, 2002-03 to 2006-07

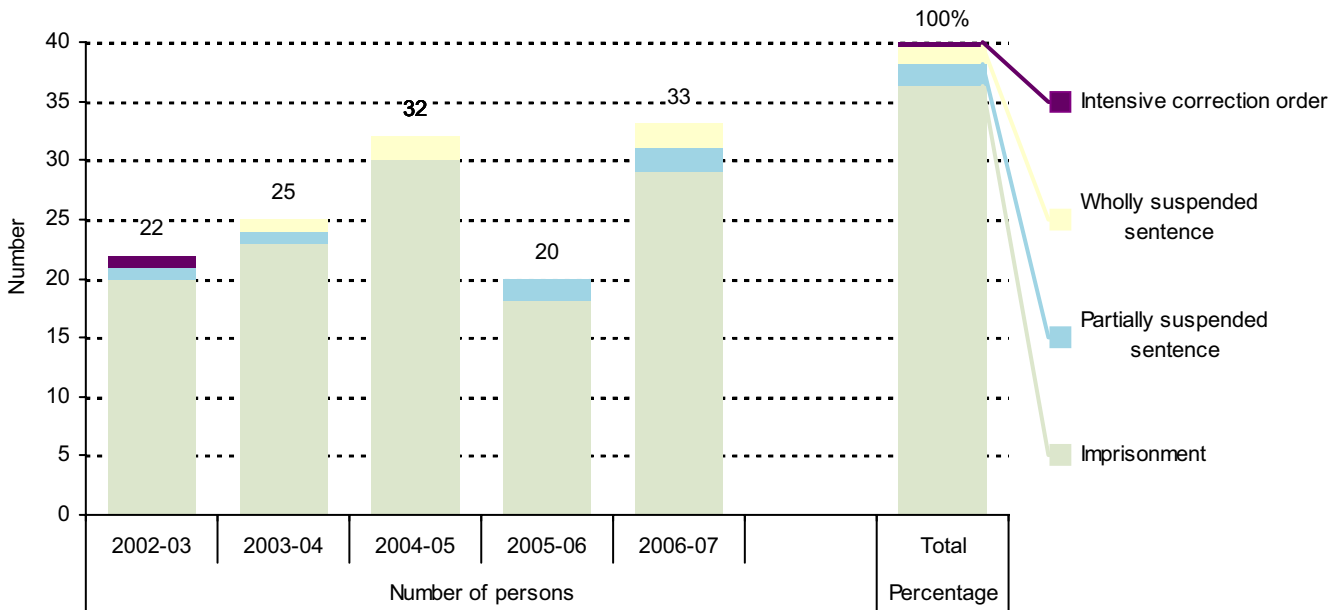


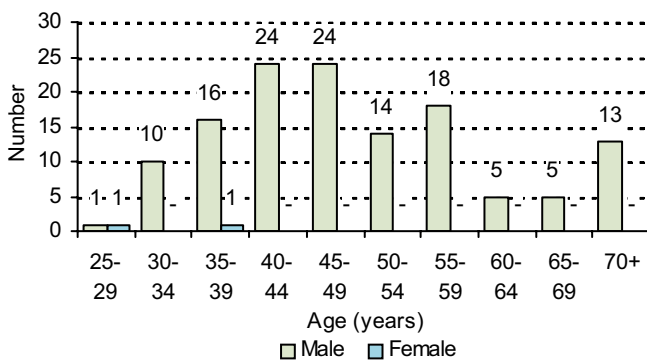
Table 1: The number and percentage of people sentenced for incest by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Imprisonment	20 91%	23 92%	30 94%	18 90%	29 88%
Partially suspended sentence	1 5%	1 4%	0 -	2 10%	2 6%
Wholly suspended sentence	0 -	1 4%	2 6%	0 -	2 6%
Intensive correction order	1 5%	0 -	0 -	0 -	0 -
People sentenced	22	25	32	20	33

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for incest grouped by their age⁷ between 2002-03 and 2006-07. The average age of people sentenced for incest was forty-nine years. There were no juveniles sentenced over this period.

Figure 4: The number of people sentenced for incest by gender and age, 2002-03 to 2006-07



Sentence types by gender

Table 2 show the types of sentence imposed for incest grouped by gender. As shown, most men received a period of imprisonment (91.5%), while one women received a period of imprisonment and the other received a wholly suspended sentence.

Table 2: The number and percentage breakdown of people sentenced for incest by gender, 2002-03 to 2006-07

Sentence type	Male	Female	Total
Imprisonment	119 92%	1 50%	120 91%
Partially suspended sentence	6 5%	0 -	6 5%
Wholly suspended sentence	4 3%	1 50%	5 4%
Intensive correction order	1 <1%	0 -	1 <1%
People sentenced	130	2	132

Sentence types by age

The most common sentence imposed was imprisonment (91%). Imprisonment was most common amongst those aged 40-44 years old (96% or 23 of the 24 people in this age group) and least common amongst those aged 55 years and older (85% or 35 of the 41 people in this age group).

Principal and total effective sentences

There are two methods for describing sentence types and lengths - the principal sentence and the total effective sentence.

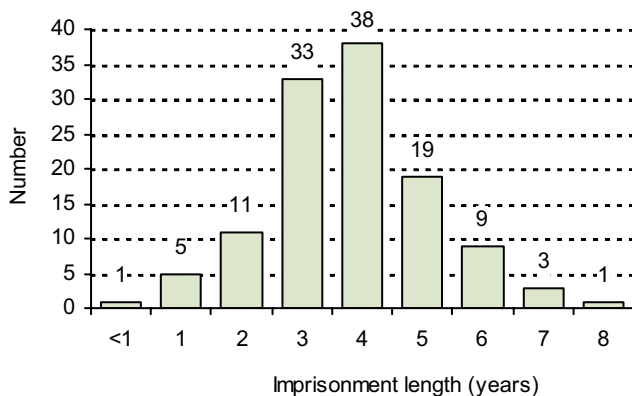
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for incest must be considered in this broader context. The following sections analyse the use of imprisonment for incest over 2002-03 to 2006-07.

Principal sentence of imprisonment

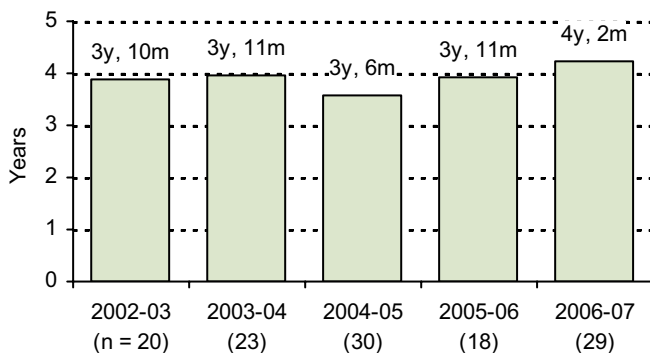
Figure 5 shows the number of people sentenced to imprisonment for incest between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 5 months to eight years, while the median length of imprisonment was four years (meaning that half of the imprisonment terms were shorter than four years and half were longer).

Figure 5: The number of people sentenced to imprisonment for incest by length of imprisonment term, 2002-03 to 2006-07



As shown in Figure 6, the average length of imprisonment term imposed on people sentenced for incest ranged from three years and six months in 2004-05 to four years and two months in 2006-07.

Figure 6: The average length of imprisonment term imposed on people sentenced for incest, 2002-03 to 2006-07

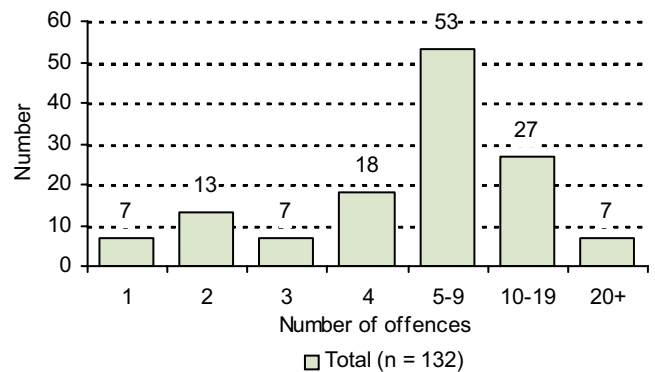


Other offences finalised at the same hearing

Often people prosecuted for incest face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of incest.

Figure 7 shows the number of people sentenced for the principal offence of incest by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 43, while the median was 6 offences. There were 7 people (5.3%) sentenced for the single offence of incest alone. The average number of offences per person sentenced for incest was 7.83.

Figure 7: The number of people sentenced for the principal offence of incest by the number of sentenced offences per person, 2002-03 to 2006-07



While Figure 7 presents the number of sentenced offences for those sentenced for incest, Figure 8 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 76 of the total 132 people (57.6%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 3.78 counts of indecent act with a child under 16.

Figure 8: The number and percentage of people sentenced for the principal offence of incest by the most common offences that were sentenced and the average number of those offences that were sentenced, 2002-03 to 2006-07

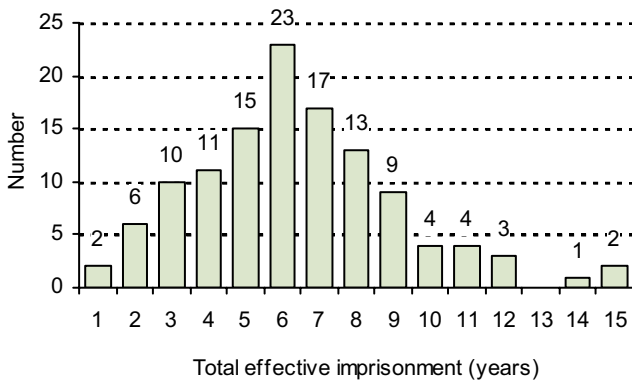
Offence	No.	%	Avg.
1 incest	132	100.0	3.72
2 indecent act with a child under 16	76	57.6	3.78
3 indecent assault	35	26.5	3.66
4 attempted incest	10	7.6	1.00
5 sexual penetration of a child under 16	9	6.8	5.67
6 gross indecency with a child	7	5.3	2.57
7 produce child pornography	7	5.3	1.14
8 possess child pornography	7	5.3	1.00
9 common law assault	5	3.8	1.20
10 making a threat to kill	3	2.3	1.00
People sentenced	132	100.0	7.83

Total effective sentence of imprisonment

There were 120 people given a total effective sentence of imprisonment⁸. Figure 9 shows the number of people sentenced to imprisonment for incest between 2002-03 and 2006-07 by the length of their total effective sentence. The length of total effective sentences ranged from one year to fifteen years⁹, while the median total effective length of imprisonment was six years and six months (meaning that half of the total effective sentence lengths were below six years and six months and half were above).

The most common total effective imprisonment length was 6 years (23 people).

Figure 9: The number of people sentenced to imprisonment for incest by total effective length of imprisonment term, 2002-03 to 2006-07



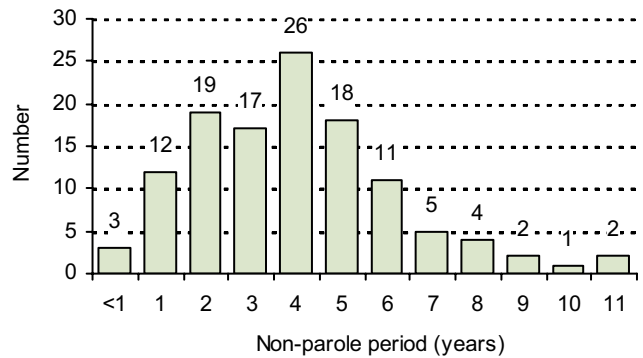
Non-parole period

When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under s.11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be lengthier than the individual principal sentence for incest. Sentences and non-parole periods must be considered in this broader context.

Of the 120 people who were sentenced to imprisonment for incest, all were given a non-parole period. Figure 10 shows the number of people sentenced to imprisonment for incest between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from six months to eleven years, while the median length of the non-parole period was four years (meaning that half of the non-parole periods were below four years and half were above).

Figure 10: The number of people sentenced to imprisonment for incest by length of non-parole period, 2002-03 to 2006-07

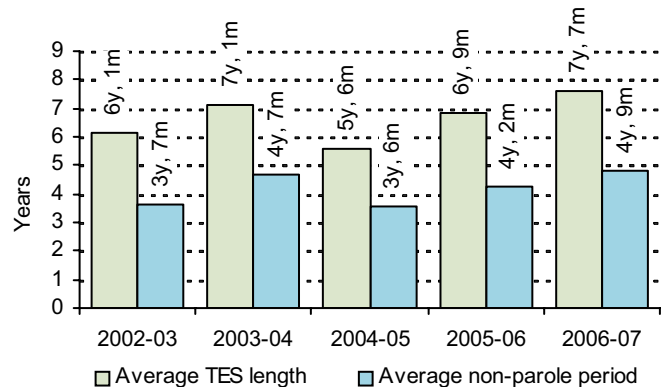


Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2002-03 to 2006-07¹⁰.

From 2002-03 to 2006-07, the average length of total effective sentence for all people ranged from five years and six months in 2004-05 to seven years and seven months in 2006-07. Over the same period, the average length of non-parole period ranged from three years and six months in 2004-05 to four years and nine months in 2006-07.

Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for incest, 2002-03 to 2006-07

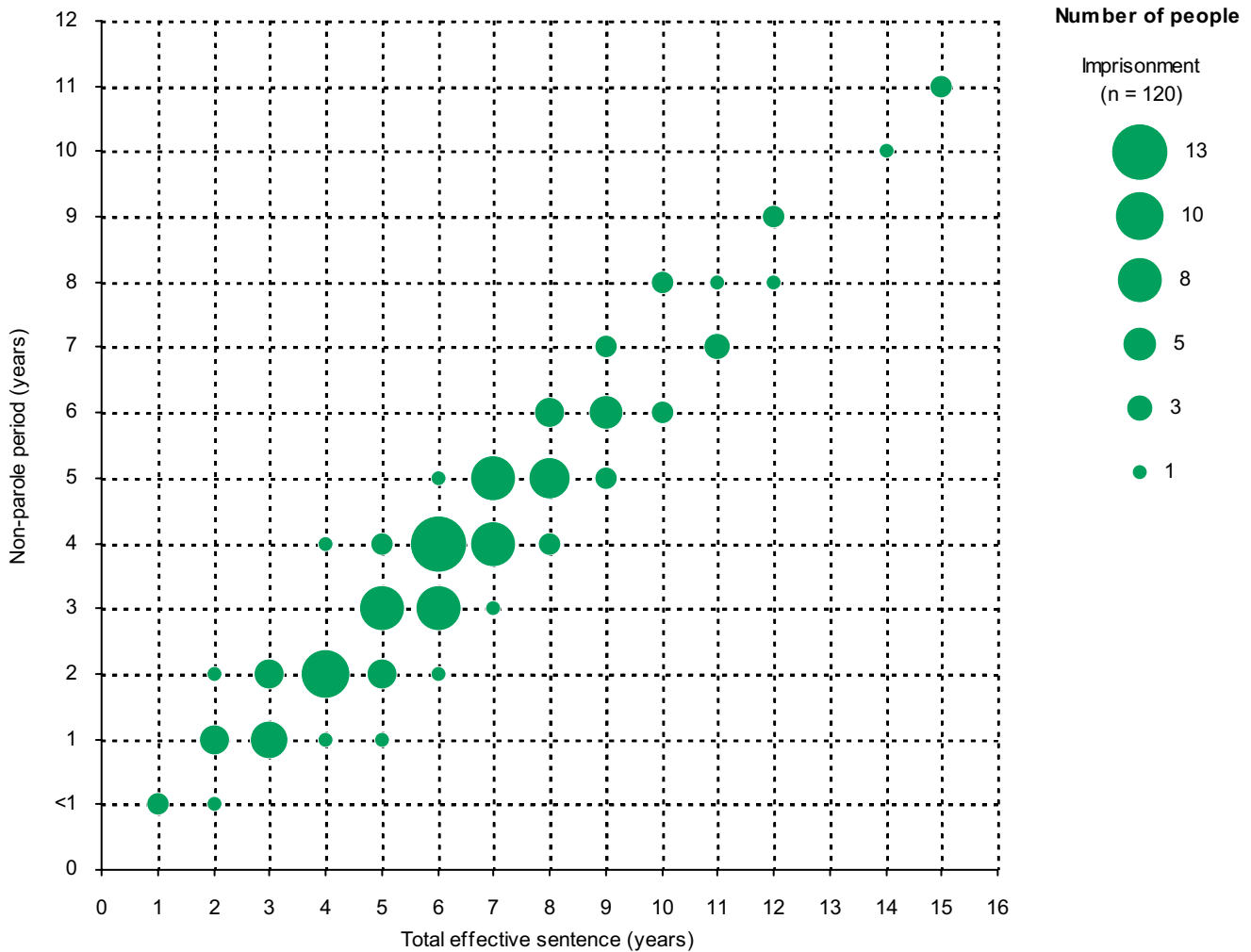


Total effective sentence of imprisonment by non-parole period

While Figure 9 and Figure 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for incest for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination¹¹. As shown, the most common combination of imprisonment length and non-parole period imposed was six years with a non-parole period of four years (13 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year with a non-parole period of six months to fifteen years with a non-parole period of eleven years¹².

Figure 12: The number of people sentenced to imprisonment for incest by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07¹³



Suspended sentences of imprisonment

There were 11 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 5 people had their prison sentence wholly suspended and 6 received a partially suspended sentence of imprisonment.

Wholly suspended sentence lengths ranged from one year to three years, while partially suspended sentences ranged from one year and four months with one year suspended to three years with two years and six months suspended.

Summary

Between 2002-03 and 2006-07, 132 people were sentenced for incest in the higher courts. Over this period, the majority of those sentenced were men (99%), while 49% were between the age of 35 and 50 years. Also, 10% were over the age of 70 years.

The majority of the people sentenced for incest received a period of imprisonment (91%).

Each of the 132 people was sentenced for an average of 7.83 offences, including 3.72 offences of incest. The most common offence finalised in conjunction with incest was indecent act with a child under 16 (57.6% of all cases). The number and range of offences for which people with a principal offence of incest were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was six years and six months, while the median principal imprisonment length was four years.

Total effective imprisonment lengths ranged from one year with a non-parole period of six months to fifteen years with a non-parole period of eleven years. The most common sentence of imprisonment was six years with a four year non-parole period.

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of incest in the County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for incest who received a more serious sentence for another offence forming part of the same presentment.
- 2 The information source for sentencing outcomes for incest only contains information on age and gender characteristics. No other demographic analysis is possible.
- 3 The statistical information presented here was provided by Court Services, Department of Justice (Vic). While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.

The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding incest offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. Of the 139 conviction returns that had incest as the principal proven offence in the five year period, 109 sentencing remarks were located. These sentencing remarks enabled the classification of incest into the sub-sections of the act. Of the remaining 30 cases, 23 committal hearings in the Magistrates' Court were examined and deemed to have adequate information to classify the offence accurately. The remaining seven cases were excluded from the analysis because the offence could not be categorised adequately.
- 4 *Crimes Act 1958* (Vic) s.44.1 and s.44.2. Section 44.3 and 44.4 are different types of incest that have a statutory maximum penalty of five years' imprisonment. These offences are excluded from this report.
- 5 This report contains statistics for people sentenced in the period 2002-03 to 2006-07. In some cases, the people were sentenced for offences that were committed at a time when the statutory maximum penalty was different. As of 1 September 1997, the statutory maximum penalty was increased to 25 years. Approximately 75% of the people sentenced for the principal offence of incest committed the offence after this date.
- 6 Custodial sentence includes imprisonment and partially suspended sentence.
- 7 Age is as at the time of sentencing.
- 8 All of the 120 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 9 In 2006-07, a man aged 51 years was sentenced for 43 offences, including 9 counts of incest, 17 counts of indecent act with a child under 16 and 15 counts of sexual penetration of a child under 16. He was sentenced to fifteen years' imprisonment with a non-parole period of eleven years. Also, in 2006-07, a man aged 47 years was sentenced for 15 offences, including 7 counts of incest and 4 counts of sexual penetration of a child under 16. He was sentenced to fifteen years' imprisonment with a non-parole period of eleven years.
- 10 Due to the low number of women (1) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.
- 11 Sentence lengths that are longer than one year are rounded to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
- 12 Refer fn 9.
- 13 This graph includes the 120 people who were given a total effective sentence and a non-parole period that related to this case only.

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Sentencing trends in the higher courts, 1999-00 to 2003-04

- No. 7 Rape

Sentencing trends in the higher courts, 2000-01 to 2004-05

- No. 8 Robbery
- No. 9 Armed robbery
- No. 10 Burglary
- No. 11 Aggravated burglary
- No. 12 Causing serious injury intentionally
- No. 13 Causing serious injury recklessly
- No. 14 Causing injury
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- No. 24 Indecent act with a child under aged 16
- No. 25 Maintain a sexual relationship with a child aged under 16
- No. 26 Rape
- No. 27 Murder
- No. 28 Manslaughter
- No. 29 Culpable driving causing death
- No. 30 Make threat to kill
- No. 31 Sexual penetration of a child aged between 10 and 16
- No. 32 Sexual penetration of a child under care
- No. 33 Sexual penetration of a child aged under 10

Sentencing trends in the higher courts, 2002-03 to 2006-07

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